IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02-03-2006

Coram:

The Honourable Mr. Justice Elipe DHARMA RAO

W.P. No.250 of 2006

D. Ravichandran .... Petitioner

:versus:

1. The Manager
Indian Overseas Bank
Idigarai Branch
Coimbatore 641 022

2. The Authorised Officer
Indian Overseas Bank
Idigarai Branch
Coimbatore 641 022 .... Respondents

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Petition under Art.226 of the Constitution, praying for a issue of Writ of Certiorari, calling for the records of the respondents in their letter dated 8-11-2005 under Sec.13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement Security Act, 2002 and quash the same.

For Petitioner :: Mr. Chinnasamy,
Senior Counsel for
Mr. Haja Mohideen Gisthi

For Respondents :: Mr. F.B. Benjamin George

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ORDER

Challenge is to the order dated 8-11-2005 passed by the respondent bank under Sec.13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act (in short SARFAESI Act), bringing the secured assets of the petitioner for sale under SARFAESI Act.

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2. The facts, in brief, are: Petitioner is a partnership firm, carrying on business in farming activities. For establishing a poultry farm, petitioner approached the respondent bank for credit facility. Respondent bank sanctioned the petitioner Rs.45,00,000/- as per the loan sanction order dated 12-4-1996. Petitioner mortgaged with the respondent bank certain lands as collateral security for the said loan. Petitioner committed default in repayment of the loan amount. Since the negotiations between the parties regarding the settlement of the outstanding loan amount did not fructify, the respondent bank initiated action under the provisions of Sec.13(2) of SARFAESI Act and issued the impugned notice. Aggrieved, the petitioner has filed the present writ petition.

3. Learned senior counsel for the petitioner submitted that the petitioner availed the credit facility for poultry rearing. Petitioner has offered certain lands, which are agricultural lands, as collateral security. Learned counsel submitted that purpose of availing the credit facility was for establishing a poultry farm, which is ancillary and supplementary to agricultural operations, and further the secured assets are agricultural lands, the nature of loan offered by the respondent bank was nothing but "agricultural loan". Learned senior counsel, relying on Sec.31(i) of SARFAESI Act, submitted that since agricultural lands are exempted from the purview of the provisions of SARFAESI Act, the respondent bank was not justified in passing the impugned order.

4. On the other hand, learned counsel appearing for the respondent bank submitted that since the challenge is to the notice issued under Sec.13(2) of the SARFAESI Act, the writ petition is not maintainable; secondly, the writ petition is premature since the respondent bank has just issued notice under Sec.13(2) of the said Act and not initiated any action against the petitioner under Sec.13(4) of the SAFAESI Act; thirdly, the issue whether the secured asset in question is an "agricultural land" or not is undoubtedly a disputed question of fact, which cannot be gone into and decided in a writ petition under Art.226 of the Constitution. Learned counsel for the respondent bank therefore submitted for all these reasons the writ petition is liable to be dismissed in limine.

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5. Learned counsel for the respondent bank submitted on merits that the reliance place by the learned senior counsel for the petitioner on the exemption granted under Sec.31(i) of the SARFAESI is incorrect as the said exemption applies only to the "agricultural land". The secured asset is not an agricultural land, but only a barren land wherein no agricultural operations are being carried on by the petitioner and the said lands are assessed to property tax, etc. The petitioner availed the loan for establishing a poultry farm, construction of poultry shed, office, etc., which is undoubtedly a commercial activity and not an agricultural operation.

6. By way of rejoinder, learned senior counsel reiterated that poultry farming is incidental to agricultural operations and, therefore, secured asset in this case is eligible for exemption under Sec.31(i) of the SARFAESI Act. Learned senior counsel, by producing field-map, etc., submitted that the land on which the poultry farm is located is far away from the land offered as collateral security. By inviting the attention of the Court to clause 21 of the Sanction Order, learned senior counsel submitted that by the said clause it is clear that the grant of the loan itself is under the head "Agricultural Advances".

7. Heard the learned counsel for the parties and perused the records. It is not in dispute that the petitioner availed credit facilities against the security of immovable property, viz. lands of an extent of 14.22 acres and 8.77 by way of equitable mortgage for establishing a poultry farm and that consequent upon the defaults committed by the petitioner in payment of principal as well as interest, the petitioner's loan account was treated as Non Performing Asset as on 31-2-2005 and the second respondent issued the impugned notice under Sec.13(2) of the SARFAESI Act calling upon the petitioner to pay in full and discharge the liabilities to the bank amounting to Rs.46,26,893/- failing which, the petitioner was informed, that action would be taken under Sec.13(4) of the said Act.

8. The main argument of the learned counsel for the petitioner is that the secured asset is "agricultural lands", which, as per Sec.31(i) of the Act, is exempt from the purview of the provisions of the SARFAESI Act and, therefore, the respondent bank was not justified in issuing the impugned notice.

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9. Placing heavy reliance on the Full Bench judgment of the Andhra Pradesh High Court in COURTS OF WARDS, PAIGAH v. COMMISSIONER OF WEALTH TAX (AIR 1969 AP 345), learned senior counsel vociferously contended that the term "agricultural land" does not necessarily mean the land wherein the agricultural operations such as raising of crops, etc. are actually being carried on; a land which is left barren but which is capable of being cultivated can also be agricultural land unless the said land is actually put to some other non-agricultural purpose like construction of buildings, etc. which alters the physical character of the land rendering it unfit for immediate cultivation and, therefore, the said term should be interpreted liberally and in wider sense.

10. The vociferous argument of the learned counsel on the strength of the aforesaid Full Bench judgment has no substance at all and does not merit consideration of this Court inasmuch as the said Full Bench judgment was overruled by a Constitution Bench of the Supreme Court in COMMISSIONER OF WEALTH TAX v. COURT OF WARDS, PAIGAH (AIR 1977 SC 113). The Supreme Court, while setting aside the judgment of the Full Bench, observed as follows:

> "We think that it is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is that we have to endeavour to find out the exact sense in which the words have been used in a particular context. We are entitled to look at the statute as a whole and give an interpretation in consonance with the purpose of the statute and what logically follows from the terms used. We are to avoid absurd results. If we were to give the widest possible connotation to the words "agricultural land" as the Full Bench of the Andhra Pradesh High Court seemed inclined to give to the term "agricultural land, we would reach the conclusion that practically all land, even that covered by buildings, is "agricultural land" inasmuch as its potential or possible use could be agricultural. The object of the Wealth Tax Act is to tax surplus wealth. It is clear that all land is not excluded from the definition of assets. It is only "agricultural land" which could be exempted. Therefore, it is imperative to give

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reasonable limits to the scope of the "agricultural land" or in other words, this exemption had to be necessarily given a more restricted meaning than the very wide ambit given to it by the Andhra Pradesh Full Bench."

11. De hors the above, even on merits, the argument of the learned senior counsel cannot be countenanced. Clause (i) of Sec.31 of SARFAESI Act states in clear terms that the provisions of the Act shall not apply to any security interest created in agricultural land. The Act, however, does not define the term "Agricultural Land". When we take stock of the Statement of Object and Reasons for enacting the SARFAESI Act, it is evident that the said Act was enacted to enable the banks and other financial institutions to realise the long-term assets, manage problems of liquidity, asset liability mis-matches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The object of the Act is to improve the recovery process by vesting the powers with the banks and financial institution powers to take possession of secured assets and sell them in case the borrowers commit default in repayment of the loan. If that is the subject of the enactment and the object of the statute, I am of the view that, in the facts and circumstances of the case, the term "agricultural land" cannot be given such a liberal and wide construction, as suggested by the learned senior counsel for the petitioner. Therefore, considering the facts and circumstances of the present case in the light of the provisions of SARFAESI Act, the term "agricultural land" cannot be given the liberal and wide interpretation.

12. Secondly, the questions whether the credit facility granted to the petitioner is "agricultural loan" and the secured asset in question is "agricultural lands" or not are not germane to the present issue as admittedly the petitioner borrowed money from the respondent bank and on their default to repay the loan, the respondent bank issued the impugned notice under Sec.13(2) of the SARFAESI Act calling upon the petitioner to discharge their liability. A conjoint reading of sub-sections (2) and (3A) of Sec.13 of the Act makes it clear that the impugned notice is really a show-cause notice and, therefore, petitioner may very well make a reply to the impugned notice, wherein they may raise all objections, including the one which they have raised in the present writ

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petition, as to why action under Sec.13(4) should not be taken against the secured assets and, on receipt of such reply, the respondent bank is bound to decide the objections of the petitioner by passing an order and if the objections are rejected, the rejection order must be communicated to the petitioner. Therefore, the challenge to the impugned notice is premature since it is possible the respondent bank may be satisfied with the objections of the petitioner and may drop further proceedings. If the respondent bank rejects the objections of the petitioner and initiates further action and ultimately passes an under Sec.13(4), the Act provides for further remedy of appeal against that order before the Tribunal Sec.17 of the Act.

13. A Division Bench of this Court, following the judgment of the Apex Court in *Mardia Chemicals Limited case* (2004 [4] SCC 311), in DIGIVISION ELECTRONICS v. INDIAN BANK AND ANOTHER (Vol.126 Company Cases 631) held as follows:

> "In a sense the notice under section 13(2) of the Securitisation Act is really a show cause notice, and ordinarily this court does not interfere with show cause notices. ... ... The notice under section 13(2) of the Securitisation Act really does not affect any right or liability of the action because by itself the notice does not affect any right or liability of the borrower. Hence, challenge to the notice under section 13(2) of the Securitisation Act is premature, since it is possible that the secured creditor may be satisfied with the reply of the borrower to the aforesaid notice and may drop the proceedings. Hence, all the writ petitions challenging the notice under Sec.13(2) of the Securitisation Act are dismissed on the ground that the writ petitions are premature, and the petitioners have an alternative remedy of raising all the points which they are raising in these writ petitions in their reply to the notice under section 13(2) of the Securitisation Act. As already stated above, the secured creditor must decide the objection of the borrower to the notice under section 13(2) of the Securitisation Act by a reasoned order, and if the objection is rejected the rejection order must be communicated." (emphasis supplied)

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The aforesaid judgment of the Division Bench of this Court applies on all fours to the facts and circumstances of the present case.

14. In MARDIA CHEMICALS LTD. v. UNION OF INDIA (2004 [4]SCC 311), on the question of borrower approaching the courts at the interlocutory stage of the proceedings under the SARFAESI Act, the Supreme Court observed as follows:

> "It is true that till the stage of making of the demand and notice under Sec.13(2) of the Act, no hearing can be claimed for by the borrower. But looking to the stringent nature of measures to be taken without intervention of court with a bar to approach the court or any other forum at that stage, it becomes only reasonable that the secured creditor must bear in mind the say of the borrower before such a process of recovery is initiated so as to demonstrate that the reply of the borrower to the notice under Section 13(2) of the Act has been considered applying mind to it. The reasons, howsoever brief they may be, for not accepting the objections." (emphasis supplied)

From the above observations it is clear that the borrower cannot approach the court or any other forum at the interlocutory stage of the proceedings, that is from the issue of notice under Sec.13(2) till the final action taken under Sec.13(4) of the Act. If the Supreme Court wants to give that scope of approaching the courts or other forum even at the interlocutory stage itself, it could have spelt out in the order itself, but there is no such observations from the Supreme Court. Therefore, I am unable to appreciate the contention of the learned senior counsel for the petitioner that the writ petition is maintainable even as against a notice issued under Sec.13(2) of the said Act.

15. Thirdly, the question whether the secured asset in question is an "agricultural land" or not, whether any agricultural operations are being carried on by the petitioner on the said lands, etc., in the absence of any documentary proof on record, are undoubtedly questions of fact, which cannot be gone into and decided by this Court under Art.226 of the Constitution. There is no document on record produced by the petitioner to show that the secured assets are

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"agricultural lands" and that the petitioner is carrying on agricultural operations in the said lands. On the other hand, the respondent bank in their reply to the legal notice issued by the petitioner refuted the claim of the petitioner by stating as follows:

> "Adverting to para 6 of your notice, my clients have stated that the lands being secured assets mortgaged by your clients both Th Ravichandran and Tmt. Indira are valuable lands which could be utilized for industry and which, in fact, are now being used for an industrial activity and in the surrounding of the land also a number of industries which have flourised and the lands are not being put to any agricultural activities much less for cultivation and as such the secured assets could no longer be called agricultural lands. Your clients have called them agricultural lands only to escape from the provision of the Securitisation Act enabling my clients to bring such land for sale. ... ..."

This question being a disputed question, the same cannot be gone into and decided in the writ petition. Even on this ground, the writ petition is liable to be dismissed.

16. For the reasons stated above, the writ petition is devoid of merits and liable to be dismissed. Accordingly it is dismissed. No costs. Connected W.P.M.P. No.301 of 2006 is closed.

Jai 2-03-2006

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

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   Indian Overseas Bank
   Idigarai Branch
   Coimbatore 641 022

2. The Authorised Officer
   Indian Overseas Bank
   Idigarai Branch
   Coimbatore 641 022

1 cc to Mr.S.Haja Mohideen Gisthi, Advocate, SR.10234
1 cc to Mr.F.Benjamin George, Advocate, SR.957

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